

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Thomas Richardson,

Petitioner

v.

William Gittere, et al.,

Respondents

Case No.: 3:22-cv-00017-RFB-WGC

SCHEDULING ORDER

Nevada prisoner Thomas Richardson is seeking habeas relief under 28 U.S.C. § 2254 in relation to his Nevada conviction and death sentence. On January 13, 2022, the Court granted Richardson's motion for appointment of counsel. ECF No. 3. The Court appointed the Federal Public Defender for the District of Nevada (FPD) to represent Richardson, and ordered the FPD to file a notice of appearance as counsel for petitioner or a notice indicating its inability to represent petitioner in these proceedings. The Court also directed the Clerk of the Court to serve Richardson's petition and ordered respondents to appear; they did so on January 24, 2022. ECF No. 4.

On February 23, 2022, the FPD filed a Notice of Conditional Acceptance of Appointment as Counsel for Petitioner and Disclosure of Conflict. ECF No. 10. In that filing, the FPD disclosed that it has a potential conflict with respect to the representation of Richardson — an investigator in the trial unit of the FPD, Michele Blackwill, formerly worked as an investigator

1 for the Clark County Special Public Defender's Office, which represented Richardson in his state
2 criminal proceedings. The FPD represents to the Court that Richardson wishes to be represented
3 by the FPD in this federal habeas corpus action, and Richardson has executed a waiver of the
4 conflict. ECF No. 10-2. The FPD's notice also describes the measures it has taken to ameliorate
5 the effects of the conflict. ECF No. 10 at 3-4. The Court has examined the notice and
6 Richardson's waiver, and **the Court now accepts the waiver.**

7 Accordingly, **the Court now sets this schedule** for proceedings under Federal Rule of
8 Civil Procedure 16(b), the Rules Governing Section 2254 Cases in the United States District
9 Courts, and Local Rule 16-1:

10 1. Amended Petition. If necessary, petitioner will file and serve an amended petition
11 for a writ of habeas corpus within 60 days after the entry of this order. In it, he must specifically
12 state whether each ground for relief has been exhausted in state court; for each claim that has
13 been exhausted in state court, the amended petition must state how, when, and where that
14 occurred. If petitioner determines that an amended petition does not need to be filed, then,
15 within the time for the filing of an amended petition, petitioner must instead file and serve a
16 statement to that effect.

17 2. Response to Petition. Respondents will have 60 days after service of the amended
18 petition to file and serve an answer or other response to the amended petition. If petitioner does
19 not file an amended petition, respondents will have 60 days following the due-date for the
20 amended petition to file and serve an answer or other response to the original petition.

21 3. Reply and Response to Reply. Petitioner will have 45 days after service of an
22 answer to file and serve a reply. Respondents will then have 30 days following service of a reply
23 to file and serve a response to the reply.

1 4. Briefing of Motion to Dismiss. If respondents file a motion to dismiss, petitioner
2 will have 30 days after service of the motion to file and serve an opposition to the motion.
3 Respondents will then have 30 days after service of the opposition to file and serve a reply.

4 5. Discovery. If petitioner wishes to move for leave to conduct discovery, he must
5 file and serve such a motion concurrently with, but separate from, the response to respondents'
6 motion to dismiss or the reply to respondents' answer. If he files a motion for leave to conduct
7 discovery before that time, it may be considered premature and denied without prejudice on that
8 basis. Respondents will file and serve a response to any such motion concurrently with, but
9 separate from, their reply in support of their motion to dismiss or their response to petitioner's
10 reply. Petitioner will then have 20 days to file and serve a reply in support of the motion for
11 leave to conduct discovery. If the Court grants leave, the Court will then establish time limits for
12 the completion of the authorized discovery.

13 6. Evidentiary Hearing. If petitioner wishes to request an evidentiary hearing, he
14 must file and serve a motion for an evidentiary hearing concurrently with, but separate from, the
15 response to respondents' motion to dismiss or the reply to respondents' answer. Any such
16 motion filed by petitioner before that time may be considered premature and denied without
17 prejudice on that basis. The motion for an evidentiary hearing must specifically address why an
18 evidentiary hearing is required and meet the requirements of 28 U.S.C. § 2254(e). The motion
19 must state whether an evidentiary hearing was held in state court, and, if so, state where the
20 transcript is located in the record. If petitioner files such a motion, respondents will file and
21 serve a response to that motion concurrently with, but separate from, their reply in support of
22 their motion to dismiss or their response to petitioner's reply. Thereafter, petitioner will have 20
23 days to file and serve a reply in support of the motion.

1 7. Status Reports and Status Conferences. The Court may from time to time, as the
2 need arises, schedule status conferences, and/or require the filing and service of status reports, in
3 order to manage the progress of this action.

4 **IT IS SO ORDERED.**

5 Dated: April 14, 2022

A handwritten signature in black ink, appearing to be 'RFB' with a stylized flourish.

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U.S. District Judge Richard F. Boulware